

AMENDED IN SENATE MAY 16, 2006

AMENDED IN SENATE MAY 3, 2006

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE FEBRUARY 28, 2006

SENATE BILL

No. 1207

Introduced by Senator Alarcon

January 26, 2006

An act to amend Section 708 of, and to add Section 708.5 to, the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1207, as amended, Alarcon. Corporations: uncontested election of a listed corporation.

Existing law provides that, in any election of the members of the board of directors of a corporation, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by those shares are elected.

This bill would specify that, in any uncontested election of a listed corporation, as defined, approval by a majority of the shares represented and voting would be required to elect each director, except in certain circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 708 of the Corporations Code is amended to read:

708. (a) Except as provided in Sections 301.5 and 708.5, every shareholder complying with subdivision (b) and entitled to vote at any election of directors may cumulate such shareholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the shareholder's shares are normally entitled, or distribute the shareholder's votes on the same principle among as many candidates as the shareholder thinks fit.

(b) No shareholder shall be entitled to cumulate votes (i.e., cast for any candidate a number of votes greater than the number of votes that the shareholder normally is entitled to cast) unless the candidate or candidates' names have been placed in nomination prior to the voting and the shareholder has given notice at the meeting prior to the voting of the shareholder's intention to cumulate the shareholder's votes. If any one shareholder has given that notice, all shareholders may cumulate their votes for candidates in nomination.

(c) Except as provided in Section 708.5, in any election of directors, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by those shares are elected; votes against the director and votes withheld shall have no legal effect.

(d) Subdivision (a) applies to the shareholders of any mutual water company organized or existing for the purpose of delivering water to its shareholders at cost on lands located within the boundaries of one or more reclamation districts now or hereafter legally existing in this state and created by or formed under the provisions of any statute of this state, but does not otherwise apply to the shareholders of mutual water companies unless their articles or bylaws so provide.

(e) Elections for directors need not be by ballot unless a shareholder demands election by ballot at the meeting and before the voting begins or unless the bylaws so require.

SEC. 2. Section 708.5 is added to the Corporations Code, to read:

1 708.5. (a) For purposes of this section, “uncontested election
2 of a listed corporation” means an election by the shareholders of
3 a domestic corporation that qualifies as a listed corporation under
4 subdivision (d) of Section 301.5 in which, at the time of the
5 election, the number of nominees for the board of directors does
6 not exceed the number of directors to be elected by the
7 shareholders at that election.

8 (b) In any uncontested election of a listed corporation,
9 approval of the shareholders, as specified in Section 153, shall be
10 required to elect a director. For purposes of Section 153, ~~shares~~
11 ~~voted against the director or shares voted withheld~~ shall be
12 considered *shares voted against a director and shall be*
13 *considered* represented and voting. However, shares that do not
14 indicate a vote shall not be considered represented and voting.

15 (c) A listed corporation described in subdivision (a) may
16 amend its articles of incorporation or bylaws to provide that
17 uncontested elections of a listed corporation shall instead be
18 conducted in the manner specified in subdivision (c) of Section
19 708, however, this amendment shall require approval of the
20 outstanding shares, as specified in Section 152.

21 (d) Shareholders may not cumulate their votes in accordance
22 with Section 708 in an uncontested election of a listed
23 corporation unless the corporation amends its articles of
24 incorporation or bylaws to provide for cumulative voting
25 pursuant to subdivision (c).

26 (e) Notwithstanding subdivision (b) of Section 301, if, in an
27 uncontested election of a listed corporation described in
28 subdivision (b), an incumbent director fails to be approved by the
29 shareholders, then the incumbent director shall resign within 90
30 days of the date of the election and the board shall declare vacant
31 the office of that director. A director’s resignation pursuant to
32 this subdivision shall not constitute removal for any purpose. A
33 vacancy on the board resulting from a director’s resignation
34 under this subdivision shall be filled in accordance with the
35 procedures set forth in Section 305. A candidate in an
36 uncontested election of a listed corporation who fails to be
37 approved by the shareholders shall not be appointed to fill any
38 vacancy on the board.

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